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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. <u>96-45</u>
Universal Service)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company, Inc. ("PRTC") hereby replies to certain comments submitted in response to the Further Notice of Proposed Rulemaking¹ issued in the above-referenced proceeding, regarding the "hold harmless" principle. While a number of parties endorse the hold harmless approach consistent with the express goals of universal service, some commenters urge the Commission to revoke its prior commitment that states not lose universal service high cost support by eradicating the hold harmless policy prematurely. However, these commenters can provide no explanation of how subscribers in potentially affected states would be protected from rate shock, either with elimination of the hold harmless provision or phase-out

¹ Federal-State Joint Board on Universal Service and Access Charge Reform, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 (rel. May 28, 1999) (hereinafter referred to as "Seventh Report and Order" (¶¶ 1-94) or "Further Notice of Proposed Rulemaking" (¶¶ 95-135)); Order, DA 99-1277 (Com. Car. Bur., rel. June 29, 1999) (revising comment date).

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on randomly-established schedules.² Thus, the Commission should adhere to its existing formulation of the hold harmless policy.

A recurring theme among hold harmless opponents is the assertion that hold harmless is inconsistent with a forward-looking methodology.³ While it is true that the hold harmless amount is not determined on the same basis as the forward-looking amount, this fact alone provides no justification for jeopardizing universal service principles by eliminating or significantly limiting the hold harmless provision. The Joint Board and the Commission made clear that public policy favors safeguarding consumers from the rate shock that would be caused by the elimination of federal universal support.⁴ According to the Commission, “[a]doption of a hold-harmless provision will both serve to avoid any potential rate shock when the new federal support mechanism goes into effect, and to prevent undue disruption of state rate designs that may have been constructed upon, and thus are dependent upon, current federal high-cost support flows.”⁵ Having made this important public policy determination, it simply is insufficient for commenters now to argue without any basis that the hold harmless mechanism should be eliminated or phased-out under some randomly designated period of time.

² In this regard, some participants have used this comment round to seek improperly the Commission’s reconsideration of its Seventh Report and Order concerning the hold harmless provision.

³ See, e.g., Iowa Utilities Board at 5; MCIWorldCom at 14.

⁴ Federal-State Joint Board on Universal Service, Second Recommended Decision, 13 FCC Rcd 24744, 24764 (¶ 53) (1998); Seventh Report and Order at ¶¶ 14, 68.

⁵ Seventh Report and Order at ¶ 68.

For example, CompTel advocates a two-year hold harmless phase-out period,⁶ and Bell Atlantic suggests the hold harmless level should be reduced by some unspecified multi-year period “prescribed at the outset.”⁷ However, it is virtually impossible to prescribe a phase-down schedule for a particular state or carrier when the proxy model amount itself cannot yet be calculated, as is the case for Puerto Rico. Precipitous loss of support will still cause the rate shock that the Commission rightly seeks to avoid in the interest of universal service goals. The potential for and the magnitude of decreases in federal support will remain indeterminable until a model with inputs for every state has been reviewed thoroughly.

Moreover, it would be at odds with the underpinnings of the hold harmless provision to prescribe a phase-out term before the impact of transition to the cost proxy model methodology could be assessed and the ability of a model to estimate accurately the costs of providing universal service could be verified. Given that the hold harmless policy is designed to mitigate the uncertainty of the forward-looking approach, “the hold-harmless mechanism prevents serious and abrupt dislocations that might otherwise occur.”⁸ These “dislocations” are just as possible in the first year of USF distributions under the model as in the last year of a “phase-down.” Sprint’s support for the hold harmless provision, arising out of its concern that the model

⁶ CompTel at 6-7; see also California Public Utilities Commission at 4 (proposing three-year phase-out).

⁷ Bell Atlantic at 6. Bell Atlantic also argues that the hold harmless provision works against the Commission’s determination that the size of the fund should not increase significantly, by forcing the fund size up when added to proxy amounts (*id.*). This same argument, however, could easily be turned around to counter the use of the proxy model amounts at all. Because the national hold harmless amount is the size of the current fund, the Commission could more directly accomplish its goal of maintaining the current fund size by retaining the current fund methodology.

⁸ See BellSouth at 10.

currently understates the forward-looking costs of providing basic local services in Sprint's local service areas,⁹ similarly demonstrates the importance of hold harmless for guarding against deleterious model results. Outputs by models previously under consideration, for example, would have eliminated virtually all support for Puerto Rico. Therefore, any adjustment or calibration of the hold harmless policy should not occur in advance of a determination that transition to a model methodology will not harm universal service efforts, which would necessarily be an area-by-area determination.¹⁰

Finally, Long Term Support ("LTS") cannot be segregated from universal service support, as suggested by certain joint state commission commenters.¹¹ LTS is an integral component of universal service support to high cost carriers, described by the Commission as one of two "explicit support mechanisms directed at increasing network subscribership by reducing rates in high cost areas."¹² Since January 1, 1998, LTS has been removed from the

⁹ Sprint at 5-6.

¹⁰ PRTC renews its request that the Commission treat similarly carriers serving insular areas and rural carriers, such that insular carriers will not be transitioned to a universal service methodology whereby support is determined by results generated by a proxy model until it can be determined that the model accurately predicts a carrier's cost of serving the area. In any event, carriers serving insular areas should not be transitioned to a proxy model methodology before it can be determined that such a methodology accurately predicts the support required to provide universal service.

¹¹ Comments of Arkansas State Regulatory Agencies, et al. at Part VII.

¹² Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8784 (¶ 10) (1997) ("First Report and Order"); see also 47 C.F.R. § 54.303 (administering LTS as part of the universal service support for high cost areas).

access charge regime and funded explicitly through the universal service fund,¹³ and administered as part of the High-Cost Fund mechanism.¹⁴

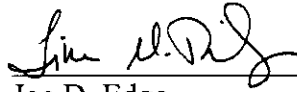
Contrary to statements by the joint commenters, the loss of LTS would threaten significant increases in end user rates as these costs are shifted either directly or indirectly to end users. For Puerto Rico, universal service, including LTS, has been a necessary means to maintain rates that result in telephone subscribership at current levels. Yet at 75 percent, the telephone penetration rate remains almost 20 percentage points below the national level. As demonstrated by PRTC's presentations in this proceeding, the economic conditions in Puerto Rico strongly suggest that even moderate rate increases caused by the elimination of high cost support to Puerto Rico would force customers off the network, in direct contravention of express universal service goals. Therefore, the Commission should reject any suggestion that LTS should be segregated from universal service high cost support, contrary to precedent and public policy.

¹³ First Report and Order, 12 FCC Rcd at 9165 (removing LTS from access charges and incorporating it as explicit universal service support); see also RAO Letter 27: Accounting for Universal Service Support Payments and Receipts, Opinion, 13 FCC Rcd 16567 (Resp. Acctg Officer 1998) (including LTS in universal support definition for accounting).

¹⁴ See Universal Service Administrative Company, et al., Report to the FCC, 13 FCC Rcd 13276, 13280 (1998); see also "State-by-State Telephone Revenue and Universal Service Data" (January 1999) at 5, Table 5 (reporting all high-cost support mechanism, including LTS); "Common Carrier Bureau Releases Report to Monitor Impact of Universal Support Mechanisms," CC Docket No. 98-202, Public Notice, DA 98-2540 (rel. December 22, 1998) at 6.

For these reasons, the hold harmless principle must be maintained without modification, at least until it can be determined that any mechanism used to determine USF distributions accurately predicts the support required to provide universal service.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joe D. Edge", is written over a horizontal line.

Joe D. Edge

Tina M. Pidgeon

DRINKER BIDDLE & REATH LLP

1500 K Street, N.W.

Suite 1100

Washington, D.C. 20005

(202) 842-8800

Attorneys for

PUERTO RICO TELEPHONE COMPANY, INC.

Dated: August 6, 1999

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Reply Comments of Puerto Rico Telephone Company was sent by hand-delivery or first-class mail or as indicated, this 6th day of August, 1999, to the following:

The Honorable Susan Ness, Chair
Commissioner
Federal Communications Commission
The Portals, Room 8B115
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
The Portals, Room 8A302
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
The Portals, Room 8C302
445 12th Street, S.W.
Washington, D.C. 20554

ITS (hand-delivered)
1231 20th Street, NW
Room 102
Washington, DC 20037

The Honorable Julia Johnson
State Chair, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, Florida 32399-0850

The Honorable Laska Schoenfelder
Commissioner
South Dakota Public Utilities Commission
State Capitol
500 East Capitol Street
Pierre, South Dakota 57501-507

The Honorable James M. Posey
Commissioner
Alaska Public Utilities Commission
1016 West 6th Avenue, Suite 400
Anchorage, Alaska 99501-1963

Martha S. Hogerty
Missouri Office of Public Council
301 West High Street, Suite 250
Truman Building
Jefferson City, Missouri 65102

Linda Kinney
Federal Communications Commission
Commissioner Ness's Office
The Portals, Room 8B115H
445 12th Street, S.W.
Washington, D.C. 20554

Sarah Whitesell
Federal Communications Commission
Commissioner Tristani's Office
The Portals, Room 8C302C
445 12th Street, S.W.
Washington, D.C. 20554

Kevin Martin
Federal Communications Commission
Commissioner Furchtgott-Roth's Office
The Portals, Room 8A302C
445 12th Street, S.W.
Washington, D.C. 20554

Rowland Curry
Texas Public Utility Commission
1701 North Congress Avenue
Austin, Texas 78701

Sheryl Todd (8 copies hand-delivered)
Federal Communications Commission
Accounting and Audits Division
Universal Service Branch
The Portals, Room 5A525
445 12th Street, S.W.
Washington, D.C. 20554

Patrick H. Wood, III
Texas Public Utility Commission
1701 North Congress Avenue
Austin, Texas 78711-3326

Sandra Makeeff Adams
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319

Peter Bluhm
Vermont Public Service Board
112 State Street
Montpelier, Vermont 05620

Charles Bolle
Public Utilities Commission of Nevada
1150 East William Street
Carson City, Nevada 89701

Lori Kenyon
Alaska Public Utilities Commission
1016 West 6th Avenue, Suite 400
Anchorage, Alaska 99501

Carl Johnson
New York Public Service Commission
3 Empire State Plaza
Albany, New York 12223-1350

Doris McCarter
Ohio Public Utilities Commission
180 E. Broad Street
Columbus, Ohio 43215-3793

Philip McClelland
PA Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Susan Stevens Miller
Maryland Public Service Commission
16th Floor, 6 Paul Street
Baltimore, Maryland 21202-6806

Thor Nelson
Colorado Office of Consumer Counsel
1580 Logan Street, Suite 610
Denver, Colorado 80203

Mary E. Newmeyer
Alabama Public Service Commission
100 N. Union Street, Suite 800
Montgomery, Alabama 36104

Barry Payne
Indiana Office of Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2208

Tom Wilson
Washington Utilities & Transportation
Commission
1300 Evergreen Park Drive, S.W.
Olympia, Washington 98504-7250

Ann Dean
Maryland Public Service Commission
16th Floor, 6 Paul Street
Baltimore, Maryland 21202-6806

David Dowds
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, Florida 32399-0850

Don Durack
Indiana Office of Consumer Counsel
100 North Senate Avenue
Indianapolis, Indiana 46204-2208

Greg Fogleman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, Florida 32399-0850

Anthony Myers
Maryland Public Service Commission
6 St. Paul Street, 19th Floor
Baltimore, Maryland 21202-6806

Diana Zake
Texas Public Utility Commission
1701 N. Congress Avenue
Austin, Texas 78701-3326

Tim Zakriski
NYS Department of Public Service
3 Empire State Plaza
Albany, New York 12223

Linda Armstrong
Federal Communications Commission
CCB, Accounting and Audits Division
Universal Service Branch
The Portals, Room 5A445
445 12th Street, S.W.
Washington, D.C. 20554

Lisa Boehley
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B544
445 12th Street, S.W.
Washington, D.C. 20554

Craig Brown
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A425
445 12th Street, S.W.
Washington, D.C. 20554

Steve Burnett
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B418
445 12th Street, S.W.
Washington, D.C. 20554

Bryan Clopton
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A465
445 12th Street, S.W.
Washington, D.C. 20554

Andrew Firth
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A505
445 12th Street, S.W.
Washington, D.C. 20554

Irene Flannery
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A426
445 12th Street, S.W.
Washington, D.C. 20554

Jack Zinman
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A663
445 12th Street, S.W.
Washington, D.C. 20554

L. Charles Keller
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A423
445 12th Street, S.W.
Washington, D.C. 20554

Katie King
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B550
445 12th Street, S.W.
Washington, D.C. 20554

Robert Loube
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B524
445 12th Street, S.W.
Washington, D.C. 20554

Brian Millin
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A525
Washington, D.C. 20554

Mark Nadel
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 8B551
445 12th Street, S.W.
Washington, D.C. 20554

Richard D. Smith
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B448
445 12th Street, S.W.
Washington, D.C. 20554

Matthew Vitale
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B530
445 12th Street, S.W.
Washington, D.C. 20554

Elizabeth H. Valinoti
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5C408
445 12th Street, S.W.
Washington, D.C. 20554

Sharon Webber
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5B552
445 12th Street, S.W.
Washington, D.C. 20554

Genaro Fullano
Federal Communications Commission
CCB, Accounting Policy Division
The Portals, Room 5A623
445 12th Street, S.W.
Washington, D.C. 20554

Brad Ramsay
NARUC
1100 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-0684

Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Mark C. Rosenblum/Judy Sello
Attorneys for AT&T Corp.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Edward Shakin
Attorney for Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

Robert Sutherland/Richard M. Sbaratta
Attorneys for Bellsouth Corporation
1155 Peachtree Street, Suite 1700
Atlanta, Georgia 30309-3610

Karen Brinkmann
Richard R. Cameron
Attorneys for CENTURYTEL, INC.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Samuel I. Loudenslager
Arkansas Public Service Commission
1000 Center
Little Rock, AK 72203

Joel B. Shifman, Esq.
Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, Maine 04333-0018

Martin Jacobson, Esq.
Montana Public Service Commission
1701 Prospect Ave.
P.O. Box 202601
Helena, MT 59620-2601

Gary Epler, Esq.
General Counsel
New Hampshire Public Utilities
Commission
8 Old Suncook Road, Building No. 1
Concord, NH 03301-7319

Illona Jeffcoat-Sacco, Esq.
North Dakota Public Service
Commission
State Capital, 600 East Blvd.
Dept. 408
Bismarck, ND 58505-0480

George Young, Esq.
Vermont Public Service Board
112 State Street
Montpelier, VT 05602

Steve Hamula, Esq.
Staff Attorney
West Virginia Public Service
Commission
201 Brooks Street/P.O. Box 812
Charleston, WV 25323

Stephen Oxley, Esq.
Secretary and Chief counsel
Wyoming Public Service Commission
Hansen Building, Suite 300
2515 Warren Avenue
Cheyenne, WY 82002

Christopher J. Wilson
Corporate Attorney
Cincinnati Bell Telephone Company
201 East 4th Street, Room 102-620
Cincinnati, Ohio 45201

Robert J. Aamoth/Paul Madison
Kelley Drye & Warrant LLP
Attorneys for Competitive
Telecommunications Association
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

George N. Barclay/Michael J. Ettner
General Services Administration
1800 F Street, N.W., Room 4002
Washington, D.C. 20405

Jeffrey S. Linder/Suzanne Yelen
Wiley, Rein & Fielding
Attorneys for GTE
1776 K Street, N.W.
Washington, D.C. 20006

Tara S. Becht
Irwin Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036

Lawrence G. Malone
General Counsel
Public Service Commission of the
State of New York
Three Empire State Plaza
Albany, NY 12223-1350

Chuck Goldfarb
MCI Worldcom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Benjamin H. Dickens/Mary J. Sisak
Blooston, Mordokofsky, Jackson &
Dickens
Attorneys for Omipoint
Communications, Inc.
2120 L Street, N.W.
Washington, D.C. 20037

Peter Arth, Jr./Lionel B. Wilson
Ellen S. Levine
Attorneys for the State of California
and California Public Utilities
Commission
505 Van Ness Avenue
San Francisco, CA 94102

Michele C. Farquhar
Hogan & Hartson
Counsel for the Personal
Communications Industry
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Alfred G. Richter, Jr./Roger K.
Toppins/Hope Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3023
Dallas, Texas 75202

Jay C. Keithley/Leon Kestenbaum
Attorney for Spring Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036-5807

Sandra K. Williams
Attorney for Sprint Corporation
4220 Shawnee Mission Parkway
Suite 303A
Westwood, KS 66205

Jonathan Chambers
Sprint PCS
1801 K Street, N.W.
Suite M112
Washington, D.C. 20006

Laurie Pappas
Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Ave., Suite 9-180
Austin, TX 78701

Michael Travieso, Chair
Telecommunications Committee
NASUCA
1133 15th Street, N.W., Suite 550
Washington, D.C. 20005

Mark Cooper
Director of Research
Consumer Federation of America
504 Highgate Terrace
Silver Spring, MD 20904

Gene Kimmelman
Co-Director
Consumers Union (Washington, D.C.)
1666 Connecticut Avenue, N.W.
Washington, D.C. 20009

Margot Smiley Humphrey
Koteen & Naftalin, L.L.P.
Attorney for TDS
Telecommunications Corporation
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036-4104

George Y. Wheeler
Koteen & Naftalin, L.L.P.
Attorney for United States Cellular
Corporation
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Lawrence E. Sarjeant/Linda L. Kent
Keith Townsend/John W. Hunter
Julie R. Jones
Attorneys for the United States
Telephone Association
1401 H Street, N.W.
Washington, D.C. 20005

Samuel E. Ebbesen
President & Chief Executive Officers
Virgin Islands Telephone Corporation
P.O. Box 6100
St. Thomas, USVI 00801-6100

Robert B. McKenna/Kathryn E. Ford
Steven R. Beck
Attorneys for US West, Inc.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Michele C. Farquhar/David L.
Sieradzki/Steven F. Morris/
Ronnie London
Hogan & Hartson
Attorneys for Western Wireless
Corporation
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Lynda L. Dorr
Public Service Commission of
Wisconsin
610 North Whitney Way
Madison, Wisconsin 53705-2729


Dottie E. Holman